

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

William Howard Rutland, III,)	Civil Action No.: 8:09-1823-SB-BHH
)	
Plaintiff,)	
)	
vs.)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
Sargent Sheets, B.C.S.O.,)	
)	
Defendant.)	

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On April 7, 2010, the defendant filed a motion for summary judgment. On April 8, 2010, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff did not respond to the motion.

As the plaintiff is proceeding *pro se*, the court filed a second order on May 17, 2010, giving the plaintiff through June 8, 2010, to file his response to the motion for summary judgment and specifically advising that if he failed to respond, this action would be dismissed for failure to prosecute. This Order was returned as "refused, unable to forward." Clerk's Office staff called the Berkeley County Detention Center, and was advised that Mr. Rutland was no longer incarcerated and was released on April 26, 2010. This Order was then re-mailed to plaintiff at his home address, and the response time was extended to June 16, 2010. The plaintiff has not responded to the summary judgment motion.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed *with prejudice* for lack

of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce H. Hendricks
United States Magistrate Judge

June 22, 2010

Greenville, South Carolina